

AMENDED IN SENATE JULY 1, 2014

AMENDED IN ASSEMBLY APRIL 21, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2499

Introduced by Assembly Member Bonilla

February 21, 2014

An act to amend Sections 1170, 1203.016, 1203.018, 2900.5, and 4019 of the Penal Code, relating to offenders.

LEGISLATIVE COUNSEL'S DIGEST

AB 2499, as amended, Bonilla. Offenders: home detention programs.

Existing law, subject to exceptions, generally makes persons convicted of a felony subject to incarceration in a county jail.

Existing law requires, unless the court finds it is not in the interest of justice, that a period of the concluding portion of a county jail term be served on mandatory supervision, which is a period of suspended execution of the term supervised by county probation. Existing law provides that mandatory supervision commences upon release from custody.

This bill would instead provide that unless otherwise ordered by the court, mandatory supervision would commence upon release from physical custody or an alternative custody program, whichever is later.

Existing law provides that the board of supervisors of any county may authorize the correctional administrator to offer a program under which inmates committed to a county jail or other county correctional facility or granted probation, or inmates participating in a work furlough program, may voluntarily participate or involuntarily be placed in a home detention program during their sentence in lieu of confinement

in the county jail or other county correctional facility or program. Existing law requires the correctional administrator to provide specified information about a participant upon request of the police department of a city where an office is located to which persons on an electronic monitoring program report. Existing law requires any information received by a police department pursuant to that request to be used only for the purpose of monitoring the impact of home electronic monitoring programs in the community.

This bill would add to the information subject to those requests, *at the discretion of the corrections administrator and solely for investigatory purposes*, current and historic GPS location data, if available. The bill would recast the provisions restricting the use of that information to prohibit a ~~police~~ *law enforcement* department that does not have the primary responsibility to supervise participants in the electronic monitoring program that receives the requested information from using the information to conduct enforcement actions based on administrative violations of the home detention program. The bill would require a ~~police~~ *law enforcement* department that has knowledge that the subject in a criminal investigation is a participant in an electronic monitoring program to make reasonable efforts to notify the supervising agency prior to serving a warrant or taking any law enforcement action against a participant in an electronic monitoring program.

By imposing additional requirements on local agencies, this bill would impose a state-mandated local program.

Existing law provides that the county board of supervisors may authorize the correctional administrator to offer a program under which inmates being held in lieu of bail in a county jail or other county correctional facility may participate in an electronic monitoring program if certain conditions are met. Existing law requires the correctional administrator to provide specified information about a participant upon request of a local law enforcement agency with jurisdiction over the location where a participant in an electronic monitoring program is placed. Existing law requires any information received by a law enforcement agency pursuant to that request to be used only for the purpose of monitoring the impact of home electronic monitoring programs in the community.

This bill would add to the information subject to those requests, *at the discretion of the corrections administrator and solely for investigatory purposes*, current and historic GPS location data, if available. The bill would recast the provisions restricting the use of that

information to prohibit a law enforcement agency that does not have the primary responsibility to supervise participants in the electronic monitoring program that receives the requested information from using the information to conduct enforcement actions based on administrative violations of the home detention program. The bill would require that an agency that has knowledge that the subject in a criminal investigation is a participant in an electronic monitoring program to make reasonable efforts to notify the supervising agency prior to serving a warrant or taking any law enforcement action against a participant in an electronic monitoring program.

By imposing additional requirements on local agencies, this bill would impose a state-mandated local program.

Existing law requires that when a defendant has been in custody, including, but not limited to, any time spent in a jail, camp, work furlough facility, and other specified facilities, all days of custody of the defendant, including, home detention for inmates who otherwise would be in jail in lieu of bail, are credited toward the term of imprisonment or toward any fine. Existing law also provides that the time spent in these facilities or programs qualifies as mandatory time in jail if the statute under which the defendant is sentenced requires a mandatory minimum period of time in jail.

This bill would include other home detention programs for the purpose of crediting days in custody for those purposes. The bill would remove the requirement that the statute under which the defendant is sentenced requires a mandatory minimum period of time in jail in order for the time spent in those facilities or programs to qualify as mandatory time in jail.

By increasing the administrative responsibilities of local agencies, this bill would impose a state-mandated local program.

Existing law provides that a prisoner, who, for specified reasons, is confined in or committed to a county jail, industrial farm, or road camp, or any city jail, industrial farm, or road camp, shall, for each 4 day period of custody, have one day deducted from the prisoner's period of confinement, unless it appears by the record that the prisoner has refused to satisfactorily perform labor as assigned by the sheriff, chief of police, or superintendent of an industrial farm or road camp. Existing law additionally requires for those prisoners, that for every 4 days of confinement, one day to be deducted from the prisoner's period of confinement, unless it appears by the record that the prisoner has not satisfactorily complied with the reasonable rules and regulations

established by the sheriff, chief of police, or superintendent of an industrial farm or road camp.

This bill would apply those provisions to persons who are ~~confined on or after January 1, 2015~~, *participants* in specified home detention programs.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 1170 of the Penal Code, as amended by*
2 *Section 16 of Chapter 26 of the Statutes of 2014, is amended to*
3 *read:*

4 1170. (a) (1) The Legislature finds and declares that the
5 purpose of imprisonment for crime is punishment. This purpose
6 is best served by terms proportionate to the seriousness of the
7 offense with provision for uniformity in the sentences of offenders
8 committing the same offense under similar circumstances. The
9 Legislature further finds and declares that the elimination of
10 disparity and the provision of uniformity of sentences can best be
11 achieved by determinate sentences fixed by statute in proportion
12 to the seriousness of the offense as determined by the Legislature
13 to be imposed by the court with specified discretion.

14 (2) Notwithstanding paragraph (1), the Legislature further finds
15 and declares that programs should be available for inmates,
16 including, but not limited to, educational programs, that are
17 designed to prepare nonviolent felony offenders for successful
18 reentry into the community. The Legislature encourages the
19 development of policies and programs designed to educate and
20 rehabilitate nonviolent felony offenders. In implementing this
21 section, the Department of Corrections and Rehabilitation is
22 encouraged to give priority enrollment in programs to promote
23 successful return to the community to an inmate with a short

1 remaining term of commitment and a release date that would allow
2 him or her adequate time to complete the program.

3 (3) In any case in which the punishment prescribed by statute
4 for a person convicted of a public offense is a term of imprisonment
5 in the state prison of any specification of three time periods, the
6 court shall sentence the defendant to one of the terms of
7 imprisonment specified unless the convicted person is given any
8 other disposition provided by law, including a fine, jail, probation,
9 or the suspension of imposition or execution of sentence or is
10 sentenced pursuant to subdivision (b) of Section 1168 because he
11 or she had committed his or her crime prior to July 1, 1977. In
12 sentencing the convicted person, the court shall apply the
13 sentencing rules of the Judicial Council. The court, unless it
14 determines that there are circumstances in mitigation of the
15 punishment prescribed, shall also impose any other term that it is
16 required by law to impose as an additional term. Nothing in this
17 article shall affect any provision of law that imposes the death
18 penalty, that authorizes or restricts the granting of probation or
19 suspending the execution or imposition of sentence, or expressly
20 provides for imprisonment in the state prison for life, except as
21 provided in paragraph (2) of subdivision (d). In any case in which
22 the amount of preimprisonment credit under Section 2900.5 or any
23 other provision of law is equal to or exceeds any sentence imposed
24 pursuant to this chapter, the entire sentence shall be deemed to
25 have been served and the defendant shall not be actually delivered
26 to the custody of the secretary. The court shall advise the defendant
27 that he or she shall serve a period of parole and order the defendant
28 to report to the parole office closest to the defendant's last legal
29 residence, unless the in-custody credits equal the total sentence,
30 including both confinement time and the period of parole. The
31 sentence shall be deemed a separate prior prison term under Section
32 667.5, and a copy of the judgment and other necessary
33 documentation shall be forwarded to the secretary.

34 (b) When a judgment of imprisonment is to be imposed and the
35 statute specifies three possible terms, the choice of the appropriate
36 term shall rest within the sound discretion of the court. At least
37 four days prior to the time set for imposition of judgment, either
38 party or the victim, or the family of the victim if the victim is
39 deceased, may submit a statement in aggravation or mitigation. In
40 determining the appropriate term, the court may consider the record

1 in the case, the probation officer's report, other reports, including
2 reports received pursuant to Section 1203.03, and statements in
3 aggravation or mitigation submitted by the prosecution, the
4 defendant, or the victim, or the family of the victim if the victim
5 is deceased, and any further evidence introduced at the sentencing
6 hearing. The court shall select the term which, in the court's
7 discretion, best serves the interests of justice. The court shall set
8 forth on the record the reasons for imposing the term selected and
9 the court may not impose an upper term by using the fact of any
10 enhancement upon which sentence is imposed under any provision
11 of law. A term of imprisonment shall not be specified if imposition
12 of sentence is suspended.

13 (c) The court shall state the reasons for its sentence choice on
14 the record at the time of sentencing. The court shall also inform
15 the defendant that as part of the sentence after expiration of the
16 term he or she may be on parole for a period as provided in Section
17 3000.

18 (d) (1) When a defendant subject to this section or subdivision
19 (b) of Section 1168 has been sentenced to be imprisoned in the
20 state prison and has been committed to the custody of the secretary,
21 the court may, within 120 days of the date of commitment on its
22 own motion, or at any time upon the recommendation of the
23 secretary or the Board of Parole Hearings, recall the sentence and
24 commitment previously ordered and resentence the defendant in
25 the same manner as if he or she had not previously been sentenced,
26 provided the new sentence, if any, is no greater than the initial
27 sentence. The court resentencing under this subdivision shall apply
28 the sentencing rules of the Judicial Council so as to eliminate
29 disparity of sentences and to promote uniformity of sentencing.
30 Credit shall be given for time served.

31 (2) (A) (i) When a defendant who was under 18 years of age
32 at the time of the commission of the offense for which the
33 defendant was sentenced to imprisonment for life without the
34 possibility of parole has served at least 15 years of that sentence,
35 the defendant may submit to the sentencing court a petition for
36 recall and resentencing.

37 (ii) Notwithstanding clause (i), this paragraph shall not apply
38 to defendants sentenced to life without parole for an offense where
39 the defendant tortured, as described in Section 206, his or her
40 victim or the victim was a public safety official, including any law

1 enforcement personnel mentioned in Chapter 4.5 (commencing
2 with Section 830) of Title 3, or any firefighter as described in
3 Section 245.1, as well as any other officer in any segment of law
4 enforcement who is employed by the federal government, the state,
5 or any of its political subdivisions.

6 (B) The defendant shall file the original petition with the
7 sentencing court. A copy of the petition shall be served on the
8 agency that prosecuted the case. The petition shall include the
9 defendant's statement that he or she was under 18 years of age at
10 the time of the crime and was sentenced to life in prison without
11 the possibility of parole, the defendant's statement describing his
12 or her remorse and work towards rehabilitation, and the defendant's
13 statement that one of the following is true:

14 (i) The defendant was convicted pursuant to felony murder or
15 aiding and abetting murder provisions of law.

16 (ii) The defendant does not have juvenile felony adjudications
17 for assault or other felony crimes with a significant potential for
18 personal harm to victims prior to the offense for which the sentence
19 is being considered for recall.

20 (iii) The defendant committed the offense with at least one adult
21 codefendant.

22 (iv) The defendant has performed acts that tend to indicate
23 rehabilitation or the potential for rehabilitation, including, but not
24 limited to, availing himself or herself of rehabilitative, educational,
25 or vocational programs, if those programs have been available at
26 his or her classification level and facility, using self-study for
27 self-improvement, or showing evidence of remorse.

28 (C) If any of the information required in subparagraph (B) is
29 missing from the petition, or if proof of service on the prosecuting
30 agency is not provided, the court shall return the petition to the
31 defendant and advise the defendant that the matter cannot be
32 considered without the missing information.

33 (D) A reply to the petition, if any, shall be filed with the court
34 within 60 days of the date on which the prosecuting agency was
35 served with the petition, unless a continuance is granted for good
36 cause.

37 (E) If the court finds by a preponderance of the evidence that
38 the statements in the petition are true, the court shall hold a hearing
39 to consider whether to recall the sentence and commitment
40 previously ordered and to resentence the defendant in the same

1 manner as if the defendant had not previously been sentenced,
2 provided that the new sentence, if any, is not greater than the initial
3 sentence. Victims, or victim family members if the victim is
4 deceased, shall retain the rights to participate in the hearing.

5 (F) The factors that the court may consider when determining
6 whether to recall and resentence include, but are not limited to,
7 the following:

8 (i) The defendant was convicted pursuant to felony murder or
9 aiding and abetting murder provisions of law.

10 (ii) The defendant does not have juvenile felony adjudications
11 for assault or other felony crimes with a significant potential for
12 personal harm to victims prior to the offense for which the sentence
13 is being considered for recall.

14 (iii) The defendant committed the offense with at least one adult
15 codefendant.

16 (iv) Prior to the offense for which the sentence is being
17 considered for recall, the defendant had insufficient adult support
18 or supervision and had suffered from psychological or physical
19 trauma, or significant stress.

20 (v) The defendant suffers from cognitive limitations due to
21 mental illness, developmental disabilities, or other factors that did
22 not constitute a defense, but influenced the defendant's
23 involvement in the offense.

24 (vi) The defendant has performed acts that tend to indicate
25 rehabilitation or the potential for rehabilitation, including, but not
26 limited to, availing himself or herself of rehabilitative, educational,
27 or vocational programs, if those programs have been available at
28 his or her classification level and facility, using self-study for
29 self-improvement, or showing evidence of remorse.

30 (vii) The defendant has maintained family ties or connections
31 with others through letter writing, calls, or visits, or has eliminated
32 contact with individuals outside of prison who are currently
33 involved with crime.

34 (viii) The defendant has had no disciplinary actions for violent
35 activities in the last five years in which the defendant was
36 determined to be the aggressor.

37 (G) The court shall have the discretion to recall the sentence
38 and commitment previously ordered and to resentence the
39 defendant in the same manner as if the defendant had not
40 previously been sentenced, provided that the new sentence, if any,

1 is not greater than the initial sentence. The discretion of the court
2 shall be exercised in consideration of the criteria in subparagraph
3 (B). Victims, or victim family members if the victim is deceased,
4 shall be notified of the resentencing hearing and shall retain their
5 rights to participate in the hearing.

6 (H) If the sentence is not recalled, the defendant may submit
7 another petition for recall and resentencing to the sentencing court
8 when the defendant has been committed to the custody of the
9 department for at least 20 years. If recall and resentencing is not
10 granted under that petition, the defendant may file another petition
11 after having served 24 years. The final petition may be submitted,
12 and the response to that petition shall be determined, during the
13 25th year of the defendant's sentence.

14 (I) In addition to the criteria in subparagraph (F), the court may
15 consider any other criteria that the court deems relevant to its
16 decision, so long as the court identifies them on the record,
17 provides a statement of reasons for adopting them, and states why
18 the defendant does or does not satisfy the criteria.

19 (J) This subdivision shall have retroactive application.

20 (e) (1) Notwithstanding any other law and consistent with
21 paragraph (1) of subdivision (a), if the secretary or the Board of
22 Parole Hearings or both determine that a prisoner satisfies the
23 criteria set forth in paragraph (2), the secretary or the board may
24 recommend to the court that the prisoner's sentence be recalled.

25 (2) The court shall have the discretion to resentence or recall if
26 the court finds that the facts described in subparagraphs (A) and
27 (B) or subparagraphs (B) and (C) exist:

28 (A) The prisoner is terminally ill with an incurable condition
29 caused by an illness or disease that would produce death within
30 six months, as determined by a physician employed by the
31 department.

32 (B) The conditions under which the prisoner would be released
33 or receive treatment do not pose a threat to public safety.

34 (C) The prisoner is permanently medically incapacitated with
35 a medical condition that renders him or her permanently unable
36 to perform activities of basic daily living, and results in the prisoner
37 requiring 24-hour total care, including, but not limited to, coma,
38 persistent vegetative state, brain death, ventilator-dependency, loss
39 of control of muscular or neurological function, and that
40 incapacitation did not exist at the time of the original sentencing.

1 The Board of Parole Hearings shall make findings pursuant to
2 this subdivision before making a recommendation for resentence
3 or recall to the court. This subdivision does not apply to a prisoner
4 sentenced to death or a term of life without the possibility of parole.

5 (3) Within 10 days of receipt of a positive recommendation by
6 the secretary or the board, the court shall hold a hearing to consider
7 whether the prisoner's sentence should be recalled.

8 (4) Any physician employed by the department who determines
9 that a prisoner has six months or less to live shall notify the chief
10 medical officer of the prognosis. If the chief medical officer
11 concurs with the prognosis, he or she shall notify the warden.
12 Within 48 hours of receiving notification, the warden or the
13 warden's representative shall notify the prisoner of the recall and
14 resentencing procedures, and shall arrange for the prisoner to
15 designate a family member or other outside agent to be notified
16 as to the prisoner's medical condition and prognosis, and as to the
17 recall and resentencing procedures. If the inmate is deemed
18 mentally unfit, the warden or the warden's representative shall
19 contact the inmate's emergency contact and provide the information
20 described in paragraph (2).

21 (5) The warden or the warden's representative shall provide the
22 prisoner and his or her family member, agent, or emergency
23 contact, as described in paragraph (4), updated information
24 throughout the recall and resentencing process with regard to the
25 prisoner's medical condition and the status of the prisoner's recall
26 and resentencing proceedings.

27 (6) Notwithstanding any other provisions of this section, the
28 prisoner or his or her family member or designee may
29 independently request consideration for recall and resentencing
30 by contacting the chief medical officer at the prison or the
31 secretary. Upon receipt of the request, the chief medical officer
32 and the warden or the warden's representative shall follow the
33 procedures described in paragraph (4). If the secretary determines
34 that the prisoner satisfies the criteria set forth in paragraph (2), the
35 secretary or board may recommend to the court that the prisoner's
36 sentence be recalled. The secretary shall submit a recommendation
37 for release within 30 days in the case of inmates sentenced to
38 determinate terms and, in the case of inmates sentenced to
39 indeterminate terms, the secretary shall make a recommendation
40 to the Board of Parole Hearings with respect to the inmates who

1 have applied under this section. The board shall consider this
2 information and make an independent judgment pursuant to
3 paragraph (2) and make findings related thereto before rejecting
4 the request or making a recommendation to the court. This action
5 shall be taken at the next lawfully noticed board meeting.

6 (7) Any recommendation for recall submitted to the court by
7 the secretary or the Board of Parole Hearings shall include one or
8 more medical evaluations, a postrelease plan, and findings pursuant
9 to paragraph (2).

10 (8) If possible, the matter shall be heard before the same judge
11 of the court who sentenced the prisoner.

12 (9) If the court grants the recall and resentencing application,
13 the prisoner shall be released by the department within 48 hours
14 of receipt of the court's order, unless a longer time period is agreed
15 to by the inmate. At the time of release, the warden or the warden's
16 representative shall ensure that the prisoner has each of the
17 following in his or her possession: a discharge medical summary,
18 full medical records, state identification, parole medications, and
19 all property belonging to the prisoner. After discharge, any
20 additional records shall be sent to the prisoner's forwarding
21 address.

22 (10) The secretary shall issue a directive to medical and
23 correctional staff employed by the department that details the
24 guidelines and procedures for initiating a recall and resentencing
25 procedure. The directive shall clearly state that any prisoner who
26 is given a prognosis of six months or less to live is eligible for
27 recall and resentencing consideration, and that recall and
28 resentencing procedures shall be initiated upon that prognosis.

29 (f) Notwithstanding any other provision of this section, for
30 purposes of paragraph (3) of subdivision (h), any allegation that
31 a defendant is eligible for state prison due to a prior or current
32 conviction, sentence enhancement, or because he or she is required
33 to register as a sex offender shall not be subject to dismissal
34 pursuant to Section 1385.

35 (g) A sentence to state prison for a determinate term for which
36 only one term is specified, is a sentence to state prison under this
37 section.

38 (h) (1) Except as provided in paragraph (3), a felony punishable
39 pursuant to this subdivision where the term is not specified in the

1 underlying offense shall be punishable by a term of imprisonment
2 in a county jail for 16 months, or two or three years.

3 (2) Except as provided in paragraph (3), a felony punishable
4 pursuant to this subdivision shall be punishable by imprisonment
5 in a county jail for the term described in the underlying offense.

6 (3) Notwithstanding paragraphs (1) and (2), where the defendant
7 (A) has a prior or current felony conviction for a serious felony
8 described in subdivision (c) of Section 1192.7 or a prior or current
9 conviction for a violent felony described in subdivision (c) of
10 Section 667.5, (B) has a prior felony conviction in another
11 jurisdiction for an offense that has all the elements of a serious
12 felony described in subdivision (c) of Section 1192.7 or a violent
13 felony described in subdivision (c) of Section 667.5, (C) is required
14 to register as a sex offender pursuant to Chapter 5.5 (commencing
15 with Section 290) of Title 9 of Part 1, or (D) is convicted of a crime
16 and as part of the sentence an enhancement pursuant to Section
17 186.11 is imposed, an executed sentence for a felony punishable
18 pursuant to this subdivision shall be served in state prison.

19 (4) Nothing in this subdivision shall be construed to prevent
20 other dispositions authorized by law, including pretrial diversion,
21 deferred entry of judgment, or an order granting probation pursuant
22 to Section 1203.1.

23 (5) (A) Unless the court finds that, in the interests of justice, it
24 is not appropriate in a particular case, the court, when imposing a
25 sentence pursuant to paragraph (1) or ~~(2) of this subdivision~~, (2),
26 shall suspend execution of a concluding portion of the term for a
27 period selected at the court's discretion.

28 (B) The portion of a defendant's sentenced term that is
29 suspended pursuant to this paragraph shall be known as mandatory
30 supervision, ~~and shall begin upon release from custody and, unless~~
31 *otherwise ordered by the court, shall commence upon release from*
32 *physical custody or an alternative custody program, whichever is*
33 *later*. During the period of mandatory supervision, the defendant
34 shall be supervised by the county probation officer in accordance
35 with the terms, conditions, and procedures generally applicable to
36 persons placed on probation, for the remaining unserved portion
37 of the sentence imposed by the court. The period of supervision
38 shall be mandatory, and may not be earlier terminated except by
39 court order. Any proceeding to revoke or modify mandatory
40 supervision under this subparagraph shall be conducted pursuant

1 to either subdivisions (a) and (b) of Section 1203.2 or Section
2 1203.3. During the period when the defendant is under such
3 supervision, unless in actual custody related to the sentence
4 imposed by the court, the defendant shall be entitled to only actual
5 time credit against the term of imprisonment imposed by the court.

6 Any time period which is suspended because a person has
7 absconded shall not be credited toward the period of supervision.

8 (6) The sentencing changes made by the act that added this
9 subdivision shall be applied prospectively to any person sentenced
10 on or after October 1, 2011.

11 (7) The sentencing changes made to paragraph (5) by the act
12 that added this paragraph shall become effective and operative on
13 January 1, 2015, and shall be applied prospectively to any person
14 sentenced on or after January 1, 2015.

15 (i) This section shall remain in effect only until January 1, 2017,
16 and as of that date is repealed, unless a later enacted statute, that
17 is enacted before that date, deletes or extends that date.

18 *SEC. 2. Section 1170 of the Penal Code, as amended by Section*
19 *17 of Chapter 26 of the Statutes of 2014, is amended to read:*

20 1170. (a) (1) The Legislature finds and declares that the
21 purpose of imprisonment for crime is punishment. This purpose
22 is best served by terms proportionate to the seriousness of the
23 offense with provision for uniformity in the sentences of offenders
24 committing the same offense under similar circumstances. The
25 Legislature further finds and declares that the elimination of
26 disparity and the provision of uniformity of sentences can best be
27 achieved by determinate sentences fixed by statute in proportion
28 to the seriousness of the offense as determined by the Legislature
29 to be imposed by the court with specified discretion.

30 (2) Notwithstanding paragraph (1), the Legislature further finds
31 and declares that programs should be available for inmates,
32 including, but not limited to, educational programs, that are
33 designed to prepare nonviolent felony offenders for successful
34 reentry into the community. The Legislature encourages the
35 development of policies and programs designed to educate and
36 rehabilitate nonviolent felony offenders. In implementing this
37 section, the Department of Corrections and Rehabilitation is
38 encouraged to give priority enrollment in programs to promote
39 successful return to the community to an inmate with a short

1 remaining term of commitment and a release date that would allow
2 him or her adequate time to complete the program.

3 (3) In any case in which the punishment prescribed by statute
4 for a person convicted of a public offense is a term of imprisonment
5 in the state prison of any specification of three time periods, the
6 court shall sentence the defendant to one of the terms of
7 imprisonment specified unless the convicted person is given any
8 other disposition provided by law, including a fine, jail, probation,
9 or the suspension of imposition or execution of sentence or is
10 sentenced pursuant to subdivision (b) of Section 1168 because he
11 or she had committed his or her crime prior to July 1, 1977. In
12 sentencing the convicted person, the court shall apply the
13 sentencing rules of the Judicial Council. The court, unless it
14 determines that there are circumstances in mitigation of the
15 punishment prescribed, shall also impose any other term that it is
16 required by law to impose as an additional term. Nothing in this
17 article shall affect any provision of law that imposes the death
18 penalty, that authorizes or restricts the granting of probation or
19 suspending the execution or imposition of sentence, or expressly
20 provides for imprisonment in the state prison for life, except as
21 provided in paragraph (2) of subdivision (d). In any case in which
22 the amount of preimprisonment credit under Section 2900.5 or any
23 other provision of law is equal to or exceeds any sentence imposed
24 pursuant to this chapter, the entire sentence shall be deemed to
25 have been served and the defendant shall not be actually delivered
26 to the custody of the secretary. The court shall advise the defendant
27 that he or she shall serve a period of parole and order the defendant
28 to report to the parole office closest to the defendant's last legal
29 residence, unless the in-custody credits equal the total sentence,
30 including both confinement time and the period of parole. The
31 sentence shall be deemed a separate prior prison term under Section
32 667.5, and a copy of the judgment and other necessary
33 documentation shall be forwarded to the secretary.

34 (b) When a judgment of imprisonment is to be imposed and the
35 statute specifies three possible terms, the court shall order
36 imposition of the middle term, unless there are circumstances in
37 aggravation or mitigation of the crime. At least four days prior to
38 the time set for imposition of judgment, either party or the victim,
39 or the family of the victim if the victim is deceased, may submit
40 a statement in aggravation or mitigation to dispute facts in the

1 record or the probation officer's report, or to present additional
2 facts. In determining whether there are circumstances that justify
3 imposition of the upper or lower term, the court may consider the
4 record in the case, the probation officer's report, other reports,
5 including reports received pursuant to Section 1203.03, and
6 statements in aggravation or mitigation submitted by the
7 prosecution, the defendant, or the victim, or the family of the victim
8 if the victim is deceased, and any further evidence introduced at
9 the sentencing hearing. The court shall set forth on the record the
10 facts and reasons for imposing the upper or lower term. The court
11 may not impose an upper term by using the fact of any
12 enhancement upon which sentence is imposed under any provision
13 of law. A term of imprisonment shall not be specified if imposition
14 of sentence is suspended.

15 (c) The court shall state the reasons for its sentence choice on
16 the record at the time of sentencing. The court shall also inform
17 the defendant that as part of the sentence after expiration of the
18 term he or she may be on parole for a period as provided in Section
19 3000.

20 (d) (1) When a defendant subject to this section or subdivision
21 (b) of Section 1168 has been sentenced to be imprisoned in the
22 state prison and has been committed to the custody of the secretary,
23 the court may, within 120 days of the date of commitment on its
24 own motion, or at any time upon the recommendation of the
25 secretary or the Board of Parole Hearings, recall the sentence and
26 commitment previously ordered and resentence the defendant in
27 the same manner as if he or she had not previously been sentenced,
28 provided the new sentence, if any, is no greater than the initial
29 sentence. The court resentencing under this subdivision shall apply
30 the sentencing rules of the Judicial Council so as to eliminate
31 disparity of sentences and to promote uniformity of sentencing.
32 Credit shall be given for time served.

33 (2) (A) (i) When a defendant who was under 18 years of age
34 at the time of the commission of the offense for which the
35 defendant was sentenced to imprisonment for life without the
36 possibility of parole has served at least 15 years of that sentence,
37 the defendant may submit to the sentencing court a petition for
38 recall and resentencing.

39 (ii) Notwithstanding clause (i), this paragraph shall not apply
40 to defendants sentenced to life without parole for an offense where

1 the defendant tortured, as described in Section 206, his or her
2 victim or the victim was a public safety official, including any law
3 enforcement personnel mentioned in Chapter 4.5 (commencing
4 with Section 830) of Title 3, or any firefighter as described in
5 Section 245.1, as well as any other officer in any segment of law
6 enforcement who is employed by the federal government, the state,
7 or any of its political subdivisions.

8 (B) The defendant shall file the original petition with the
9 sentencing court. A copy of the petition shall be served on the
10 agency that prosecuted the case. The petition shall include the
11 defendant's statement that he or she was under 18 years of age at
12 the time of the crime and was sentenced to life in prison without
13 the possibility of parole, the defendant's statement describing his
14 or her remorse and work towards rehabilitation, and the defendant's
15 statement that one of the following is true:

16 (i) The defendant was convicted pursuant to felony murder or
17 aiding and abetting murder provisions of law.

18 (ii) The defendant does not have juvenile felony adjudications
19 for assault or other felony crimes with a significant potential for
20 personal harm to victims prior to the offense for which the sentence
21 is being considered for recall.

22 (iii) The defendant committed the offense with at least one adult
23 codefendant.

24 (iv) The defendant has performed acts that tend to indicate
25 rehabilitation or the potential for rehabilitation, including, but not
26 limited to, availing himself or herself of rehabilitative, educational,
27 or vocational programs, if those programs have been available at
28 his or her classification level and facility, using self-study for
29 self-improvement, or showing evidence of remorse.

30 (C) If any of the information required in subparagraph (B) is
31 missing from the petition, or if proof of service on the prosecuting
32 agency is not provided, the court shall return the petition to the
33 defendant and advise the defendant that the matter cannot be
34 considered without the missing information.

35 (D) A reply to the petition, if any, shall be filed with the court
36 within 60 days of the date on which the prosecuting agency was
37 served with the petition, unless a continuance is granted for good
38 cause.

39 (E) If the court finds by a preponderance of the evidence that
40 the statements in the petition are true, the court shall hold a hearing

1 to consider whether to recall the sentence and commitment
2 previously ordered and to resentence the defendant in the same
3 manner as if the defendant had not previously been sentenced,
4 provided that the new sentence, if any, is not greater than the initial
5 sentence. Victims, or victim family members if the victim is
6 deceased, shall retain the rights to participate in the hearing.

7 (F) The factors that the court may consider when determining
8 whether to recall and resentence include, but are not limited to,
9 the following:

10 (i) The defendant was convicted pursuant to felony murder or
11 aiding and abetting murder provisions of law.

12 (ii) The defendant does not have juvenile felony adjudications
13 for assault or other felony crimes with a significant potential for
14 personal harm to victims prior to the offense for which the sentence
15 is being considered for recall.

16 (iii) The defendant committed the offense with at least one adult
17 codefendant.

18 (iv) Prior to the offense for which the sentence is being
19 considered for recall, the defendant had insufficient adult support
20 or supervision and had suffered from psychological or physical
21 trauma, or significant stress.

22 (v) The defendant suffers from cognitive limitations due to
23 mental illness, developmental disabilities, or other factors that did
24 not constitute a defense, but influenced the defendant's
25 involvement in the offense.

26 (vi) The defendant has performed acts that tend to indicate
27 rehabilitation or the potential for rehabilitation, including, but not
28 limited to, availing himself or herself of rehabilitative, educational,
29 or vocational programs, if those programs have been available at
30 his or her classification level and facility, using self-study for
31 self-improvement, or showing evidence of remorse.

32 (vii) The defendant has maintained family ties or connections
33 with others through letter writing, calls, or visits, or has eliminated
34 contact with individuals outside of prison who are currently
35 involved with crime.

36 (viii) The defendant has had no disciplinary actions for violent
37 activities in the last five years in which the defendant was
38 determined to be the aggressor.

39 (G) The court shall have the discretion to recall the sentence
40 and commitment previously ordered and to resentence the

1 defendant in the same manner as if the defendant had not
2 previously been sentenced, provided that the new sentence, if any,
3 is not greater than the initial sentence. The discretion of the court
4 shall be exercised in consideration of the criteria in subparagraph
5 (B). Victims, or victim family members if the victim is deceased,
6 shall be notified of the resentencing hearing and shall retain their
7 rights to participate in the hearing.

8 (H) If the sentence is not recalled, the defendant may submit
9 another petition for recall and resentencing to the sentencing court
10 when the defendant has been committed to the custody of the
11 department for at least 20 years. If recall and resentencing is not
12 granted under that petition, the defendant may file another petition
13 after having served 24 years. The final petition may be submitted,
14 and the response to that petition shall be determined, during the
15 25th year of the defendant's sentence.

16 (I) In addition to the criteria in subparagraph (F), the court may
17 consider any other criteria that the court deems relevant to its
18 decision, so long as the court identifies them on the record,
19 provides a statement of reasons for adopting them, and states why
20 the defendant does or does not satisfy the criteria.

21 (J) This subdivision shall have retroactive application.

22 (e) (1) Notwithstanding any other law and consistent with
23 paragraph (1) of subdivision (a), if the secretary or the Board of
24 Parole Hearings or both determine that a prisoner satisfies the
25 criteria set forth in paragraph (2), the secretary or the board may
26 recommend to the court that the prisoner's sentence be recalled.

27 (2) The court shall have the discretion to resentence or recall if
28 the court finds that the facts described in subparagraphs (A) and
29 (B) or subparagraphs (B) and (C) exist:

30 (A) The prisoner is terminally ill with an incurable condition
31 caused by an illness or disease that would produce death within
32 six months, as determined by a physician employed by the
33 department.

34 (B) The conditions under which the prisoner would be released
35 or receive treatment do not pose a threat to public safety.

36 (C) The prisoner is permanently medically incapacitated with
37 a medical condition that renders him or her permanently unable
38 to perform activities of basic daily living, and results in the prisoner
39 requiring 24-hour total care, including, but not limited to, coma,
40 persistent vegetative state, brain death, ventilator-dependency, loss

1 of control of muscular or neurological function, and that
2 incapacitation did not exist at the time of the original sentencing.

3 The Board of Parole Hearings shall make findings pursuant to
4 this subdivision before making a recommendation for resentence
5 or recall to the court. This subdivision does not apply to a prisoner
6 sentenced to death or a term of life without the possibility of parole.

7 (3) Within 10 days of receipt of a positive recommendation by
8 the secretary or the board, the court shall hold a hearing to consider
9 whether the prisoner's sentence should be recalled.

10 (4) Any physician employed by the department who determines
11 that a prisoner has six months or less to live shall notify the chief
12 medical officer of the prognosis. If the chief medical officer
13 concurs with the prognosis, he or she shall notify the warden.
14 Within 48 hours of receiving notification, the warden or the
15 warden's representative shall notify the prisoner of the recall and
16 resentencing procedures, and shall arrange for the prisoner to
17 designate a family member or other outside agent to be notified
18 as to the prisoner's medical condition and prognosis, and as to the
19 recall and resentencing procedures. If the inmate is deemed
20 mentally unfit, the warden or the warden's representative shall
21 contact the inmate's emergency contact and provide the information
22 described in paragraph (2).

23 (5) The warden or the warden's representative shall provide the
24 prisoner and his or her family member, agent, or emergency
25 contact, as described in paragraph (4), updated information
26 throughout the recall and resentencing process with regard to the
27 prisoner's medical condition and the status of the prisoner's recall
28 and resentencing proceedings.

29 (6) Notwithstanding any other provisions of this section, the
30 prisoner or his or her family member or designee may
31 independently request consideration for recall and resentencing
32 by contacting the chief medical officer at the prison or the
33 secretary. Upon receipt of the request, the chief medical officer
34 and the warden or the warden's representative shall follow the
35 procedures described in paragraph (4). If the secretary determines
36 that the prisoner satisfies the criteria set forth in paragraph (2), the
37 secretary or board may recommend to the court that the prisoner's
38 sentence be recalled. The secretary shall submit a recommendation
39 for release within 30 days in the case of inmates sentenced to
40 determinate terms and, in the case of inmates sentenced to

1 indeterminate terms, the secretary shall make a recommendation
2 to the Board of Parole Hearings with respect to the inmates who
3 have applied under this section. The board shall consider this
4 information and make an independent judgment pursuant to
5 paragraph (2) and make findings related thereto before rejecting
6 the request or making a recommendation to the court. This action
7 shall be taken at the next lawfully noticed board meeting.

8 (7) Any recommendation for recall submitted to the court by
9 the secretary or the Board of Parole Hearings shall include one or
10 more medical evaluations, a postrelease plan, and findings pursuant
11 to paragraph (2).

12 (8) If possible, the matter shall be heard before the same judge
13 of the court who sentenced the prisoner.

14 (9) If the court grants the recall and resentencing application,
15 the prisoner shall be released by the department within 48 hours
16 of receipt of the court's order, unless a longer time period is agreed
17 to by the inmate. At the time of release, the warden or the warden's
18 representative shall ensure that the prisoner has each of the
19 following in his or her possession: a discharge medical summary,
20 full medical records, state identification, parole medications, and
21 all property belonging to the prisoner. After discharge, any
22 additional records shall be sent to the prisoner's forwarding
23 address.

24 (10) The secretary shall issue a directive to medical and
25 correctional staff employed by the department that details the
26 guidelines and procedures for initiating a recall and resentencing
27 procedure. The directive shall clearly state that any prisoner who
28 is given a prognosis of six months or less to live is eligible for
29 recall and resentencing consideration, and that recall and
30 resentencing procedures shall be initiated upon that prognosis.

31 (f) Notwithstanding any other provision of this section, for
32 purposes of paragraph (3) of subdivision (h), any allegation that
33 a defendant is eligible for state prison due to a prior or current
34 conviction, sentence enhancement, or because he or she is required
35 to register as a sex offender shall not be subject to dismissal
36 pursuant to Section 1385.

37 (g) A sentence to state prison for a determinate term for which
38 only one term is specified, is a sentence to state prison under this
39 section.

1 (h) (1) Except as provided in paragraph (3), a felony punishable
2 pursuant to this subdivision where the term is not specified in the
3 underlying offense shall be punishable by a term of imprisonment
4 in a county jail for 16 months, or two or three years.

5 (2) Except as provided in paragraph (3), a felony punishable
6 pursuant to this subdivision shall be punishable by imprisonment
7 in a county jail for the term described in the underlying offense.

8 (3) Notwithstanding paragraphs (1) and (2), where the defendant
9 (A) has a prior or current felony conviction for a serious felony
10 described in subdivision (c) of Section 1192.7 or a prior or current
11 conviction for a violent felony described in subdivision (c) of
12 Section 667.5, (B) has a prior felony conviction in another
13 jurisdiction for an offense that has all the elements of a serious
14 felony described in subdivision (c) of Section 1192.7 or a violent
15 felony described in subdivision (c) of Section 667.5, (C) is required
16 to register as a sex offender pursuant to Chapter 5.5 (commencing
17 with Section 290) of Title 9 of Part 1, or (D) is convicted of a crime
18 and as part of the sentence an enhancement pursuant to Section
19 186.11 is imposed, an executed sentence for a felony punishable
20 pursuant to this subdivision shall be served in state prison.

21 (4) Nothing in this subdivision shall be construed to prevent
22 other dispositions authorized by law, including pretrial diversion,
23 deferred entry of judgment, or an order granting probation pursuant
24 to Section 1203.1.

25 (5) (A) Unless the court finds, in the interest of justice, that it
26 is not appropriate in a particular case, the court, when imposing a
27 sentence pursuant to paragraph (1) or ~~(2) of this subdivision~~, (2),
28 shall suspend execution of a concluding portion of the term for a
29 period selected at the court's discretion.

30 (B) The portion of a defendant's sentenced term that is
31 suspended pursuant to this paragraph shall be known as mandatory
32 supervision, ~~and shall begin upon release from custody and, unless~~
33 *otherwise ordered by the court, shall commence upon release from*
34 *physical custody or an alternative custody program, whichever is*
35 *later*. During the period of mandatory supervision, the defendant
36 shall be supervised by the county probation officer in accordance
37 with the terms, conditions, and procedures generally applicable to
38 persons placed on probation, for the remaining unserved portion
39 of the sentence imposed by the court. The period of supervision
40 shall be mandatory, and may not be earlier terminated except by

1 court order. Any proceeding to revoke or modify mandatory
2 supervision under this subparagraph shall be conducted pursuant
3 to either subdivisions (a) and (b) of Section 1203.2 or Section
4 1203.3. During the period when the defendant is under such
5 supervision, unless in actual custody related to the sentence
6 imposed by the court, the defendant shall be entitled to only actual
7 time credit against the term of imprisonment imposed by the court.
8 Any time period which is suspended because a person has
9 absconded shall not be credited toward the period of supervision.

10 (6) The sentencing changes made by the act that added this
11 subdivision shall be applied prospectively to any person sentenced
12 on or after October 1, 2011.

13 (7) The sentencing changes made to paragraph (5) by the act
14 that added this paragraph shall become effective and operative on
15 January 1, 2015, and shall be applied prospectively to any person
16 sentenced on or after January 1, 2015.

17 (i) This section shall become operative on January 1, 2017.

18 ~~SECTION 1.~~

19 *SEC. 3.* Section 1203.016 of the Penal Code is amended to
20 read:

21 1203.016. (a) Notwithstanding any other law, the board of
22 supervisors of any county may authorize the correctional
23 administrator, as defined in subdivision (h), to offer a program
24 under which inmates committed to a county jail or other county
25 correctional facility or granted probation, or inmates participating
26 in a work furlough program, may voluntarily participate or
27 involuntarily be placed in a home detention program during their
28 sentence in lieu of confinement in the county jail or other county
29 correctional facility or program under the auspices of the probation
30 officer.

31 (b) The board of supervisors, in consultation with the
32 correctional administrator, may prescribe reasonable rules and
33 regulations under which a home detention program may operate.
34 As a condition of participation in the home detention program, the
35 inmate shall give his or her consent in writing to participate in the
36 home detention program and shall in writing agree to comply or,
37 for involuntary participation, the inmate shall be informed in
38 writing that he or she shall comply, with the rules and regulations
39 of the program, including, but not limited to, the following rules:

1 (1) The participant shall remain within the interior premises of
2 his or her residence during the hours designated by the correctional
3 administrator.

4 (2) The participant shall admit any person or agent designated
5 by the correctional administrator into his or her residence at any
6 time for purposes of verifying the participant's compliance with
7 the conditions of his or her detention.

8 (3) The participant shall agree to the use of electronic
9 monitoring, which may include global positioning system devices
10 or other supervising devices for the purpose of helping to verify
11 his or her compliance with the rules and regulations of the home
12 detention program. The devices shall not be used to eavesdrop or
13 record any conversation, except a conversation between the
14 participant and the person supervising the participant which is to
15 be used solely for the purposes of voice identification.

16 (4) The participant shall agree that the correctional administrator
17 in charge of the county correctional facility from which the
18 participant was released may, without further order of the court,
19 immediately retake the person into custody to serve the balance
20 of his or her sentence if the electronic monitoring or supervising
21 devices are unable for any reason to properly perform their function
22 at the designated place of home detention, if the person fails to
23 remain within the place of home detention as stipulated in the
24 agreement, if the person willfully fails to pay fees to the provider
25 of electronic home detention services, as stipulated in the
26 agreement, subsequent to the written notification of the participant
27 that the payment has not been received and that return to custody
28 may result, or if the person for any other reason no longer meets
29 the established criteria under this section. A copy of the agreement
30 shall be delivered to the participant and a copy retained by the
31 correctional administrator.

32 (c) Whenever the peace officer supervising a participant has
33 reasonable cause to believe that the participant is not complying
34 with the rules or conditions of the program, or that the electronic
35 monitoring devices are unable to function properly in the
36 designated place of confinement, the peace officer may, under
37 general or specific authorization of the correctional administrator,
38 and without a warrant of arrest, retake the person into custody to
39 complete the remainder of the original sentence.

1 (d) Nothing in this section shall be construed to require the
2 correctional administrator to allow a person to participate in this
3 program if it appears from the record that the person has not
4 satisfactorily complied with reasonable rules and regulations while
5 in custody. A person shall be eligible for participation in a home
6 detention program only if the correctional administrator concludes
7 that the person meets the criteria for release established under this
8 section and that the person's participation is consistent with any
9 reasonable rules and regulations prescribed by the board of
10 supervisors or the administrative policy of the correctional
11 administrator.

12 (1) The rules and regulations and administrative policy of the
13 program shall be written and reviewed on an annual basis by the
14 county board of supervisors and the correctional administrator.
15 The rules and regulations shall be given to or made available to
16 any participant upon request.

17 (2) The correctional administrator, or his or her designee, shall
18 have the sole discretionary authority to permit program
19 participation as an alternative to physical custody. All persons
20 referred or recommended by the court to participate in the home
21 detention program pursuant to subdivision (e) who are denied
22 participation or all persons removed from program participation
23 shall be notified in writing of the specific reasons for the denial
24 or removal. The notice of denial or removal shall include the
25 participant's appeal rights, as established by program administrative
26 policy.

27 (e) The court may recommend or refer a person to the
28 correctional administrator for consideration for placement in the
29 home detention program. The recommendation or referral of the
30 court shall be given great weight in the determination of acceptance
31 or denial. At the time of sentencing or at any time that the court
32 deems it necessary, the court may restrict or deny the defendant's
33 participation in a home detention program.

34 (f) The correctional administrator may permit home detention
35 program participants to seek and retain employment in the
36 community, attend psychological counseling sessions or
37 educational or vocational training classes, or seek medical and
38 dental assistance. Willful failure of the program participant to
39 return to the place of home detention not later than the expiration
40 of any period of time during which he or she is authorized to be

1 away from the place of home detention pursuant to this section
2 and unauthorized departures from the place of home detention are
3 punishable as provided in Section 4532.

4 (g) The board of supervisors may prescribe a program
5 administrative fee to be paid by each home detention participant
6 that shall be determined according to his or her ability to pay.
7 Inability to pay all or a portion of the program fees shall not
8 preclude participation in the program, and eligibility shall not be
9 enhanced by reason of ability to pay. All program administration
10 and supervision fees shall be administered in compliance with
11 Section 1208.2.

12 (h) As used in this section, "Correctional administrator" means
13 the sheriff, probation officer, or director of the county department
14 of corrections.

15 (i) Notwithstanding any other law, the police department of a
16 city where an office is located to which persons on an electronic
17 monitoring program report may request the county correctional
18 administrator to provide information concerning those persons.
19 This information shall be limited to the name, address, date of
20 birth, offense committed by the home detainee, and if available,
21 *at the discretion of the supervising agency and solely for*
22 *investigatory purposes*, current and historical GPS coordinates of
23 the home detainee. A ~~police~~ *law enforcement* department that does
24 not have the primary responsibility to supervise participants in the
25 electronic monitoring program that receives information pursuant
26 to this subdivision shall not use the information to conduct
27 enforcement actions based on administrative violations of the home
28 detention program. A ~~police~~ *law enforcement* department that has
29 knowledge that the subject in a criminal investigation is a
30 participant in an electronic monitoring program shall make
31 reasonable efforts to notify the supervising agency prior to serving
32 a warrant or taking any law enforcement action against a participant
33 in an electronic monitoring program.

34 (j) It is the intent of the Legislature that home detention
35 programs established under this section maintain the highest public
36 confidence, credibility, and public safety. In the furtherance of
37 these standards, the following shall apply:

38 (1) The correctional administrator, with the approval of the
39 board of supervisors, may administer a home detention program
40 pursuant to written contracts with appropriate public or private

1 agencies or entities to provide specified program services. No
2 public or private agency or entity may operate a home detention
3 program in any county without a written contract with that county's
4 correctional administrator. However, this does not apply to the use
5 of electronic monitoring by the Department of Corrections and
6 Rehabilitation. No public or private agency or entity entering into
7 a contract may itself employ any person who is in the home
8 detention program.

9 (2) Program acceptance shall not circumvent the normal booking
10 process for sentenced offenders. All home detention program
11 participants shall be supervised.

12 (3) (A) All privately operated home detention programs shall
13 be under the jurisdiction of, and subject to the terms and conditions
14 of the contract entered into with, the correctional administrator.

15 (B) Each contract shall include, but not be limited to, all of the
16 following:

17 (i) A provision whereby the private agency or entity agrees to
18 operate in compliance with any available standards promulgated
19 by state correctional agencies and bodies, including the Corrections
20 Standards Authority, and all statutory provisions and mandates,
21 state and county, as appropriate and applicable to the operation of
22 home detention programs and the supervision of sentenced
23 offenders in a home detention program.

24 (ii) A provision that clearly defines areas of respective
25 responsibility and liability of the county and the private agency or
26 entity.

27 (iii) A provision that requires the private agency or entity to
28 demonstrate evidence of financial responsibility, submitted and
29 approved by the board of supervisors, in amounts and under
30 conditions sufficient to fully indemnify the county for reasonably
31 foreseeable public liability, including legal defense costs, that may
32 arise from, or be proximately caused by, acts or omissions of the
33 contractor. The contract shall provide for annual review by the
34 correctional administrator to ensure compliance with requirements
35 set by the board of supervisors and for adjustment of the financial
36 responsibility requirements if warranted by caseload changes or
37 other factors.

38 (iv) A provision that requires the private agency or entity to
39 provide evidence of financial responsibility, such as certificates
40 of insurance or copies of insurance policies, prior to commencing

1 any operations pursuant to the contract or at any time requested
2 by the board of supervisors or correctional administrator.

3 (v) A provision that permits the correctional administrator to
4 immediately terminate the contract with a private agency or entity
5 at any time that the contractor fails to demonstrate evidence of
6 financial responsibility.

7 (C) All privately operated home detention programs shall
8 comply with all appropriate, applicable ordinances and regulations
9 specified in subdivision (a) of Section 1208.

10 (D) The board of supervisors, the correctional administrator,
11 and the designee of the correctional administrator shall comply
12 with Section 1090 of the Government Code in the consideration,
13 making, and execution of contracts pursuant to this section.

14 (E) The failure of the private agency or entity to comply with
15 statutory provisions and requirements or with the standards
16 established by the contract and with the correctional administrator
17 may be sufficient cause to terminate the contract.

18 (F) Upon the discovery that a private agency or entity with
19 whom there is a contract is not in compliance pursuant to this
20 paragraph, the correctional administrator shall give 60 days' notice
21 to the director of the private agency or entity that the contract may
22 be canceled if the specified deficiencies are not corrected.

23 (G) Shorter notice may be given or the contract may be canceled
24 without notice whenever a serious threat to public safety is present
25 because the private agency or entity has failed to comply with this
26 section.

27 (k) For purposes of this section, "evidence of financial
28 responsibility" may include, but is not limited to, certified copies
29 of any of the following:

30 (1) A current liability insurance policy.

31 (2) A current errors and omissions insurance policy.

32 (3) A surety bond.

33 ~~SEC. 2.~~

34 *SEC. 4.* Section 1203.018 of the Penal Code is amended to
35 read:

36 1203.018. (a) Notwithstanding any other law, this section shall
37 only apply to inmates being held in lieu of bail and on no other
38 basis.

39 (b) Notwithstanding any other law, the board of supervisors of
40 any county may authorize the correctional administrator, as defined

1 in paragraph (1) of subdivision (k), to offer a program under which
2 inmates being held in lieu of bail in a county jail or other county
3 correctional facility may participate in an electronic monitoring
4 program if the conditions specified in subdivision (c) are met.

5 (c) (1) In order to qualify for participation in an electronic
6 monitoring program pursuant to this section, the inmate shall be
7 an inmate with no holds or outstanding warrants to whom one of
8 the following circumstances applies:

9 (A) The inmate has been held in custody for at least 30 calendar
10 days from the date of arraignment pending disposition of only
11 misdemeanor charges.

12 (B) The inmate has been held in custody pending disposition
13 of charges for at least 60 calendar days from the date of
14 arraignment.

15 (C) The inmate is appropriate for the program based on a
16 determination by the correctional administrator that the inmate's
17 participation would be consistent with the public safety interests
18 of the community.

19 (2) All participants shall be subject to discretionary review for
20 eligibility and compliance by the correctional administrator
21 consistent with this section.

22 (d) The board of supervisors, after consulting with the sheriff
23 and district attorney, may prescribe reasonable rules and regulations
24 under which an electronic monitoring program pursuant to this
25 section may operate. As a condition of participation in the
26 electronic monitoring program, the participant shall give his or
27 her consent in writing to participate and shall agree in writing to
28 comply with the rules and regulations of the program, including,
29 but not limited to, all of the following:

30 (1) The participant shall remain within the interior premises of
31 his or her residence during the hours designated by the correctional
32 administrator.

33 (2) The participant shall admit any person or agent designated
34 by the correctional administrator into his or her residence at any
35 time for purposes of verifying the participant's compliance with
36 the conditions of his or her detention.

37 (3) The electronic monitoring may include global positioning
38 system devices or other supervising devices for the purpose of
39 helping to verify the participant's compliance with the rules and
40 regulations of the electronic monitoring program. The electronic

1 devices shall not be used to eavesdrop or record any conversation,
2 except a conversation between the participant and the person
3 supervising the participant to be used solely for the purposes of
4 voice identification.

5 (4) The correctional administrator in charge of the county
6 correctional facility from which the participant was released may,
7 without further order of the court, immediately retake the person
8 into custody if the electronic monitoring or supervising devices
9 are unable for any reason to properly perform their function at the
10 designated place of home detention, if the person fails to remain
11 within the place of home detention as stipulated in the agreement,
12 if the person willfully fails to pay fees to the provider of electronic
13 home detention services, as stipulated in the agreement, subsequent
14 to the written notification of the participant that the payment has
15 not been received and that return to custody may result, or if the
16 person for any other reason no longer meets the established criteria
17 under this section.

18 (5) A copy of the signed consent to participate and a copy of
19 the agreement to comply with the rules and regulations shall be
20 provided to the participant and a copy shall be retained by the
21 correctional administrator.

22 (e) The rules and regulations and administrative policy of the
23 program shall be reviewed on an annual basis by the county board
24 of supervisors and the correctional administrator. The rules and
25 regulations shall be given to every participant.

26 (f) Whenever the peace officer supervising a participant has
27 reasonable cause to believe that the participant is not complying
28 with the rules or conditions of the program, or that the electronic
29 monitoring devices are unable to function properly in the
30 designated place of confinement, the peace officer may, under
31 general or specific authorization of the correctional administrator,
32 and without a warrant of arrest, retake the person into custody.

33 (g) (1) Nothing in this section shall be construed to require the
34 correctional administrator to allow a person to participate in this
35 program if it appears from the record that the person has not
36 satisfactorily complied with reasonable rules and regulations while
37 in custody. A person shall be eligible for participation in an
38 electronic monitoring program only if the correctional administrator
39 concludes that the person meets the criteria for release established
40 under this section and that the person's participation is consistent

1 with any reasonable rules and regulations prescribed by the board
2 of supervisors or the administrative policy of the correctional
3 administrator.

4 (2) The correctional administrator, or his or her designee, shall
5 have discretionary authority consistent with this section to permit
6 program participation as an alternative to physical custody. All
7 persons approved by the correctional administrator to participate
8 in the electronic monitoring program pursuant to subdivision (c)
9 who are denied participation and all persons removed from program
10 participation shall be notified in writing of the specific reasons for
11 the denial or removal. The notice of denial or removal shall include
12 the participant's appeal rights, as established by program
13 administrative policy.

14 (h) The correctional administrator may permit electronic
15 monitoring program participants to seek and retain employment
16 in the community, attend psychological counseling sessions or
17 educational or vocational training classes, or seek medical and
18 dental assistance.

19 (i) Willful failure of the program participant to return to the
20 place of home detention prior to the expiration of any period of
21 time during which he or she is authorized to be away from the
22 place of home detention pursuant to this section and unauthorized
23 departures from the place of home detention is punishable pursuant
24 to Section 4532.

25 (j) The board of supervisors may prescribe a program
26 administrative fee to be paid by each electronic monitoring
27 participant.

28 (k) For purposes of this section, the following terms have the
29 following meanings:

30 (1) "Correctional administrator" means the sheriff, probation
31 officer, or director of the county department of corrections.

32 (2) "Electronic monitoring program" includes, but is not limited
33 to, home detention programs, work furlough programs, and work
34 release programs.

35 (l) Notwithstanding any other law, upon request of a local law
36 enforcement agency with jurisdiction over the location where a
37 participant in an electronic monitoring program is placed, the
38 correctional administrator shall provide the following information
39 regarding participants in the electronic monitoring program:

40 (1) The participant's name, address, and date of birth.

1 (2) The offense or offenses alleged to have been committed by
2 the participant.

3 (3) The period of time the participant will be placed on home
4 detention.

5 (4) Whether the participant successfully completed the
6 prescribed period of home detention or was returned to a county
7 correctional facility, and if the person was returned to a county
8 correctional facility, the reason for the return.

9 (5) The gender and ethnicity of the participant.

10 ~~(6) Current and~~

11 *(m) Notwithstanding any other law, upon request of a local law*
12 *enforcement agency with jurisdiction over the location where a*
13 *participant in an electronic monitoring program is placed, the*
14 *correctional administrator may, in his or her discretion and solely*
15 *for investigatory purposes, provide current and historical GPS*
16 *coordinates, if available.*

17 ~~(m)~~

18 *(n) A law enforcement agency that does not have the primary*
19 *responsibility to supervise participants in the electronic monitoring*
20 *program that receives information pursuant to subdivision (l) shall*
21 *not use the information to conduct enforcement actions based on*
22 *administrative violations of the home detention program. An*
23 *agency that has knowledge that the subject in a criminal*
24 *investigation is a participant in an electronic monitoring program*
25 *shall make reasonable efforts to notify the supervising agency prior*
26 *to serving a warrant or taking any law enforcement action against*
27 *a participant in an electronic monitoring program.*

28 ~~(n)~~

29 *(o) It is the intent of the Legislature that electronic monitoring*
30 *programs established under this section maintain the highest public*
31 *confidence, credibility, and public safety. In the furtherance of*
32 *these standards, the following shall apply:*

33 (1) The correctional administrator, with the approval of the
34 board of supervisors, may administer an electronic monitoring
35 program as provided in this section pursuant to written contracts
36 with appropriate public or private agencies or entities to provide
37 specified program services. A public or private agency or entity
38 shall not operate a home detention program pursuant to this section
39 in any county without a written contract with that county's
40 correctional administrator. A public or private agency or entity

1 entering into a contract pursuant to this subdivision shall not itself
2 employ any person who is in the electronic monitoring program.

3 (2) Program participants shall undergo the normal booking
4 process for arrestees entering the jail. All electronic monitoring
5 program participants shall be supervised.

6 (3) (A) All privately operated electronic monitoring programs
7 shall be under the jurisdiction of, and subject to the terms and
8 conditions of the contract entered into with, the correctional
9 administrator.

10 (B) Each contract specified in subparagraph (A) shall include,
11 but not be limited to, all of the following:

12 (i) A provision whereby the private agency or entity agrees to
13 operate in compliance with any available standards and all state
14 and county laws applicable to the operation of electronic
15 monitoring programs and the supervision of offenders in an
16 electronic monitoring program.

17 (ii) A provision that clearly defines areas of respective
18 responsibility and liability of the county and the private agency or
19 entity.

20 (iii) A provision that requires the private agency or entity to
21 demonstrate evidence of financial responsibility, submitted to and
22 approved by the board of supervisors, in amounts and under
23 conditions sufficient to fully indemnify the county for reasonably
24 foreseeable public liability, including legal defense costs that may
25 arise from, or be proximately caused by, acts or omissions of the
26 contractor.

27 (iv) A provision that requires the private agency or entity to
28 provide evidence of financial responsibility, such as certificates
29 of insurance or copies of insurance policies, prior to commencing
30 any operations pursuant to the contract or at any time requested
31 by the board of supervisors or correctional administrator.

32 (v) A provision that requires an annual review by the
33 correctional administrator to ensure compliance with requirements
34 set by the board of supervisors and for adjustment of the financial
35 responsibility requirements if warranted by caseload changes or
36 other factors.

37 (vi) A provision that permits the correctional administrator to
38 immediately terminate the contract with a private agency or entity
39 at any time that the contractor fails to demonstrate evidence of
40 financial responsibility.

1 (C) All privately operated electronic monitoring programs shall
2 comply with all applicable ordinances and regulations specified
3 in subdivision (a) of Section 1208.

4 (D) The board of supervisors, the correctional administrator,
5 and the designee of the correctional administrator shall comply
6 with Section 1090 of the Government Code in the consideration,
7 making, and execution of contracts pursuant to this section.

8 (E) The failure of the private agency or entity to comply with
9 state or county laws or with the standards established by the
10 contract with the correctional administrator shall constitute cause
11 to terminate the contract.

12 (F) Upon the discovery that a private agency or entity with
13 which there is a contract is not in compliance with this paragraph,
14 the correctional administrator shall give 60 days' notice to the
15 director of the private agency or entity that the contract may be
16 canceled if the specified deficiencies are not corrected.

17 (G) Shorter notice may be given or the contract may be canceled
18 without notice whenever a serious threat to public safety is present
19 because the private agency or entity has failed to comply with this
20 section.

21 (H) For purposes of this section, "evidence of financial
22 responsibility" may include, but is not limited to, certified copies
23 of any of the following:

24 (i) A current liability insurance policy.

25 (ii) A current errors and omissions insurance policy.

26 (iii) A surety bond.

27 ~~SEC. 3.~~

28 *SEC. 5.* Section 2900.5 of the Penal Code is amended to read:

29 2900.5. (a) In all felony and misdemeanor convictions, either
30 by plea or by verdict, when the defendant has been in custody,
31 including, but not limited to, any time spent in a jail, camp, work
32 furlough facility, halfway house, rehabilitation facility, hospital,
33 prison, juvenile detention facility, or similar residential institution,
34 all days of custody of the defendant, including days served as a
35 condition of probation in compliance with a court order, credited
36 to the period of confinement pursuant to Section 4019, and days
37 served in home detention pursuant to Section 1203.016 or
38 1203.018, shall be credited upon his or her term of imprisonment,
39 or credited to any fine, including, but not limited to, base fines, on
40 a proportional basis, that may be imposed, at the rate of not less

1 than thirty dollars (\$30) per day, or more, in the discretion of the
2 court imposing the sentence. If the total number of days in custody
3 exceeds the number of days of the term of imprisonment to be
4 imposed, the entire term of imprisonment shall be deemed to have
5 been served. In any case where the court has imposed both a prison
6 or jail term of imprisonment and a fine, any days to be credited to
7 the defendant shall first be applied to the term of imprisonment
8 imposed, and thereafter the remaining days, if any, shall be applied
9 to the fine, including, but not limited to, base fines, on a
10 proportional basis.

11 (b) For the purposes of this section, credit shall be given only
12 where the custody to be credited is attributable to proceedings
13 related to the same conduct for which the defendant has been
14 convicted. Credit shall be given only once for a single period of
15 custody attributable to multiple offenses for which a consecutive
16 sentence is imposed.

17 (c) For the purposes of this section, “term of imprisonment”
18 includes any period of imprisonment imposed as a condition of
19 probation or otherwise ordered by a court in imposing or
20 suspending the imposition of any sentence, and also includes any
21 term of imprisonment, including any period of imprisonment prior
22 to release on parole and any period of imprisonment and parole,
23 prior to discharge, whether established or fixed by statute, by any
24 court, or by any duly authorized administrative agency.

25 (d) It is the duty of the court imposing the sentence to determine
26 the date or dates of any admission to, and release from, custody
27 prior to sentencing and the total number of days to be credited
28 pursuant to this section. The total number of days to be credited
29 shall be contained in the abstract of judgment provided for in
30 Section 1213.

31 (e) It is the duty of any agency to which a person is committed
32 to apply the credit provided for in this section for the period
33 between the date of sentencing and the date the person is delivered
34 to the agency.

35 (f) If a defendant serves time in a camp, work furlough facility,
36 halfway house, rehabilitation facility, hospital, juvenile detention
37 facility, similar residential facility, or home detention program
38 pursuant to Section 1203.016, 1203.017, or 1203.018, in lieu of
39 imprisonment in a county jail, the time spent in these facilities or
40 programs shall qualify as mandatory time in jail.

(g) Notwithstanding any other provision of this code as it pertains to the sentencing of convicted offenders, this section does not authorize the sentencing of convicted offenders to any of the facilities or programs mentioned herein.

~~SEC. 4.~~

SEC. 6. Section 4019 of the Penal Code is amended to read:

4019. (a) The provisions of this section shall apply in all of the following cases:

(1) When a prisoner is confined in or committed to a county jail, industrial farm, or road camp, or any city jail, industrial farm, or road camp, including all days of custody from the date of arrest to the date on which the serving of the sentence commences, under a judgment of imprisonment, or a fine and imprisonment until the fine is paid in a criminal action or proceeding.

(2) When a prisoner is confined in or committed to the county jail, industrial farm, or road camp or any city jail, industrial farm, or road camp as a condition of probation after suspension of imposition of a sentence or suspension of execution of sentence, in a criminal action or proceeding.

(3) When a prisoner is confined in or committed to the county jail, industrial farm, or road camp or any city jail, industrial farm, or road camp for a definite period of time for contempt pursuant to a proceeding, other than a criminal action or proceeding.

(4) When a prisoner is confined in a county jail, industrial farm, or road camp, or a city jail, industrial farm, or road camp following arrest and prior to the imposition of sentence for a felony conviction.

(5) When a prisoner is confined in a county jail, industrial farm, or road camp, or a city jail, industrial farm, or road camp as part of custodial sanction imposed following a violation of postrelease community supervision or parole.

(6) When a prisoner is confined in a county jail, industrial farm, or road camp, or a city jail, industrial farm, or road camp as a result of a sentence imposed pursuant to subdivision (h) of Section 1170.

(7) *When a prisoner participates in a program pursuant to Section 1203.016 or Section 4024.2.*

(b) Subject to the provisions of subdivision (d), for each four-day period in which a prisoner is confined in or committed to a facility as specified in this section, one day shall be deducted from his or her period of confinement unless it appears by the record that the

1 prisoner has refused to satisfactorily perform labor as assigned by
2 the sheriff, chief of police, or superintendent of an industrial farm
3 or road camp.

4 (c) For each four-day period in which a prisoner is confined in
5 or committed to a facility as specified in this section, one day shall
6 be deducted from his or her period of confinement unless it appears
7 by the record that the prisoner has not satisfactorily complied with
8 the reasonable rules and regulations established by the sheriff,
9 chief of police, or superintendent of an industrial farm or road
10 camp.

11 (d) This section does not require the sheriff, chief of police, or
12 superintendent of an industrial farm or road camp to assign labor
13 to a prisoner if it appears from the record that the prisoner has
14 refused to satisfactorily perform labor as assigned or that the
15 prisoner has not satisfactorily complied with the reasonable rules
16 and regulations of the sheriff, chief of police, or superintendent of
17 any industrial farm or road camp.

18 (e) A deduction shall not be made under this section unless the
19 person is committed for a period of four days or longer.

20 (f) It is the intent of the Legislature that if all days are earned
21 under this section, a term of four days will be deemed to have been
22 served for every two days spent in actual custody.

23 (g) The changes in this section as enacted by the act that added
24 this subdivision shall apply to prisoners who are confined to a
25 county jail, city jail, industrial farm, or road camp for a crime
26 committed on or after the effective date of that act.

27 (h) The changes to this section enacted by the act that added
28 this subdivision shall apply prospectively and shall apply to
29 prisoners who are confined to a county jail, city jail, industrial
30 farm, or road camp for a crime committed on or after October 1,
31 2011. Any days earned by a prisoner prior to October 1, 2011,
32 shall be calculated at the rate required by the prior law.

33 (i) This section shall not apply, and no credits may be earned,
34 for periods of flash incarceration imposed pursuant to Section
35 3000.08 or 3454.

36 ~~(j) This section shall also apply to prisoners confined pursuant~~
37 ~~to Section 1203.016 or 1203.018 on or after January 1, 2015. Any~~
38 ~~days earned prior to January 1, 2015, shall be calculated at the rate~~
39 ~~specified by law applicable prior to January 1, 2015.~~

40 (j) *This section shall apply prospectively.*

1 ~~SEC. 5.~~

2 *SEC. 7.* If the Commission on State Mandates determines that
3 this act contains costs mandated by the state, reimbursement to
4 local agencies and school districts for those costs shall be made
5 pursuant to Part 7 (commencing with Section 17500) of Division
6 4 of Title 2 of the Government Code.

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